

DEPARTMENT OF INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTOR155 Golden Gate Avenue, Room 4181
San Francisco, CA 94102

ADDRESS REPLY TO:

P.O. Box 420603
San Francisco, CA 94142

September 28, 1994

J. Alan Hines, President
Carson Energy Group
8580 Laguna Station Rd.
Elk Grove, CA 95758

SEP 29 1994

RE: Public Works Case No. 94-031
Carson Ice-Gen Project, Central Valley Financing Authority and Carson Energy Group

Dear Mr. Hines:

This letter constitutes the determination of the Director of the Department of Industrial Relations regarding coverage of the above project under the public works law and is made pursuant to 8 California Code of Regulations (C.C.R.) Sections 16001(a) and 16301. Based on a review of the documents submitted and an analysis of the relevant facts as presented and the applicable law, I have determined that the "major repairs" and routine daily maintenance portions of the agreement for the project referenced above are "public works" within the meaning of Labor Code Section 1720 et seq.. Daily operation of the power plant is not covered under the public works law.

Labor Code Section 1720(a) generally defines "public works" to mean: "Construction, alteration, demolition or repair work done under contract and paid for in whole or in part out of public funds...." In addition, Labor Code Section 1771 extends the definition of "public works" to include maintenance work. 8 C.C.R. Section 16000 defines "maintenance" as:

"(1) Routine, recurring and usual work for the preservation, protection and keeping of any publicly owned or publicly operated facility (plant, building, structure, ground facility, utility system or any real property) for its intended purposes in a safe and continually usable condition for which it has been designed, improved, constructed, altered or repaired.

(2) Carpentry, electrical, plumbing, glazing, touchup painting, and other craft work designed to preserve the publicly owned or publicly operated facility in a safe, efficient and continuously usable condition for which it was intended, including repairs, cleaning and other operations on machinery and other equipment permanently attached to the building or realty as fixtures."

In this case, Carson Energy Group (Carson) has agreed in its Operation and Maintenance Agreement (Agreement) with Central Valley Financing Authority (Authority) to operate and maintain an approximately 95 megawatt cogeneration power plant owned by the Authority. Carson will receive a base fee and a variable fee for all electricity produced by the plant. Carson will hire the operation and maintenance staff and pay for all supplies and materials needed in the daily operation of the plant. The Authority is responsible for all fuel costs necessary to run the plant. In addition, the Authority is responsible for paying all costs associated with "major repairs" under the terms of the Agreement. Under the Agreement, "major repairs" will include repair, overhaul and maintenance procedures.

According to the information provided, the scope of the activities under the "major repairs" section of the Agreement and the job duties of the proposed Cogeneration Instrument & Electronic Technician and the Cogeneration Power Plant Mechanic classifications would be "public works". Those activities and job duties involve repair work within the meaning of Labor Code Section 1771. They are also maintenance within the meaning of 8 C.C.R. Section 16000(1) and (2) because they constitute routine, recurring and usual work for the preservation, protection and keeping up of the plant for its intended purposes in a safe and continually usable condition for which it is being constructed, and electrical and other craft work designed to preserve the plant in a safe, efficient and continually usable condition for which it is intended.

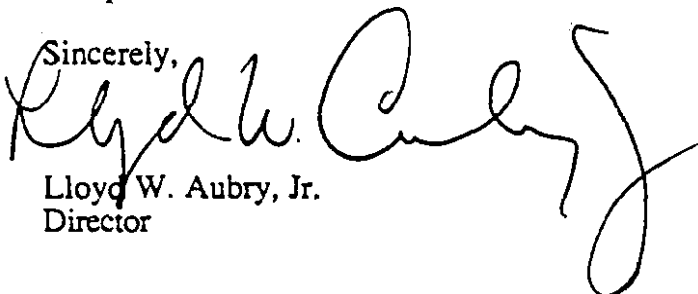
Prevailing wage requirements do not apply to the Cogeneration Power Plant Operator classification because the operator will be not be engaged, other than to a de minimus extent, in any of the type of activities listed in Labor Code Sections 1720(a) or 1771. Consistent with previous determinations, the daily operation of the plant is not a "public works."

Please note, however, that there is a contractual obligation to pay prevailing wages in Article 8 of the Agreement. That article provides that, to the extent required by law, Carson is to pay the prevailing wage to each craft, classification or type of worker performing services under the Agreement.

The Division of Labor Statistics and Research will issue Special Prevailing Wage Determinations for the covered classifications and this project upon request from Carson. Please contact Dorothy Vuksich, Chief, Division of Labor Statistics and Research at P.O. Box 420603, San Francisco, CA 94142-0603 or call the Division at (415) 703-4281 for information regarding the procedure for requesting Special Determinations.

All interested parties are advised that 8 C.C.R. Section 16002.5 provides an appeal process regarding coverage determinations. Under that regulation, any interested party may file with the Director an appeal within thirty (30) days of the issuance of the coverage determination. 8 C.C.R. Section 16000 defines "interested party" to include contractors, subcontractors, workers, labor organizations, awarding bodies or representatives of any of these entities. The notice of appeal is required to state the full factual and legal ground upon which the determination is appealed, and whether a hearing is desired. The decision whether to hold a hearing is within the Director's discretion. A final administrative determination on appeal is subject to judicial review by way of writ pursuant to the Code of Civil Procedure.

Sincerely,



Lloyd W. Aubry, Jr.
Director

cc: R.W. Stranberg, Chief Deputy Director
Victoria Bradshaw, Labor Commissioner
Dorothy Vuksich, Chief--DLSR
Rita Tsuda, Deputy Chief--DAS
Vanessa L. Holton, Senior Counsel--OD Legal